

1970-1975
1976-1981

1. This is an action for declaratory relief to establish that Uhl's registration of the Domain Name (*i.e.*, <overstocks.com>) is lawful, and does not violate Defendant Overstock.com, Inc.'s rights thereunder.
2. Web Services, Inc. and/or Uhl registered the Domain Name long before Defendant alleges to have acquired any rights in The Domain Name Overstock.com.

3. Web Services, Inc. and Uhl brings this action to confirm their rights in the Domain Name and prevent its transfer to Defendant, and to prevent further interference from Defendant with Plaintiffs lawful use of the Domain Name.

II. JURISDICTION AND VENUE

4. This court has subject matter jurisdiction over this action pursuant to 28 U.S.C. §1332 based upon diversity of citizenship.

5. This Court has personal jurisdiction over Defendant because Defendant does business within the State of New Jersey, and has corresponded with Plaintiffs threatening damages against Plaintiffs if Plaintiffs continue using their abovedescribed Domain Name.

6. Venue is proper in this Court pursuant to 28 U.S.C. §§1391(c) because Defendant, a corporation, does business within this judicial district.

III. PARTIES

7. Plaintiff Web Services Inc. is a corporation doing business in Mercer County, New Jersey.

8. Plaintiff Harrison Uhl III is an individual residing in West Windsor, Mercer County, New Jersey.

9. Defendant Overstocks.com, Inc. is a corporation registered and doing business in the State of Utah and/or the State of Delaware.

IV. FACTS

10. Web Services, Inc. and/or Uhl registered the Domain Name on April 1, 1996.

11. Web Services, Inc. and/or Uhl registered the Domain Name through the domain name registrar Network Solutions, whose offices are located in Hendron, Virginia.

12. At the time of registration of the Domain Name Web Services, Inc. and Uhl were not aware of any third party with rights in "Overstock" or "Overstock.com".

13. Web Services, Inc. and/or Uhl registered the Domain Name with an intention to propagate a website therefrom and not to profit from any third party's goodwill in a Domain Name similar or identical to Plaintiffs' Domain Name.

14. From 1996 through the present time, Plaintiffs continued activity and pursuit of development of a commercial website on their Domain Name.

15. Plaintiffs believe that, in or about 1999, Defendant began using the Domain Name "Overstock.com".

16. Plaintiffs aver that Defendant began using this Domain Name when Defendant knew or should have known of Plaintiffs' prior registration of their own abovedescribed Domain Name.

17. By letter dated July 12, 2005, over nine (9) years after its first registration, Defendant first advised Plaintiff of its registration of Defendant's Domain Name and of a trademark allegedly awarded to Defendant. (See Exhibit A).

18. Plaintiff, by Counsel, promptly, on August 3, 2005, advised Defendant of Plaintiff's pre-existing Domain Name, and of Defendant's failure to ever inquire about same. (See Exhibit B).

19. Defendant failed to respond to Plaintiff's August 3, 2005 correspondence, but on April 4, 2006 again demanded that Plaintiffs cease and desist from using their lawful Domain Name. (See Exhibit C).

V. FIRST CAUSE OF ACTION DECLARATORY RELIEF

20. Plaintiffs incorporate the allegations set forth above as though fully set forth herein.

21. There is an actual controversy with respect to whether Defendant is entitled to interfere with Plaintiffs' use of their Domain Name, or whether Plaintiffs are entitled to the continued use of their own properly registered and pre-existing Domain Name.

22. The matter in controversy in the instant action is valued in excess of Seventy-Five Thousand (\$75,000.00) Dollars, exclusive of interest and costs.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiffs Web Services Inc. and Harrison Uhl, III, pray for the following relief:

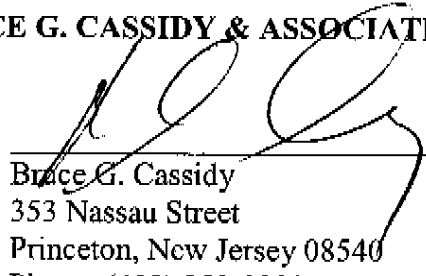
1. A Judgment declaring that Plaintiffs are not required to transfer the registration for the Domain Name to Defendant;
2. A Judgment prohibiting Defendant from taking any further action with respect to the transfer of the Domain Name;
3. A Judgment prohibiting Defendant from taking any further action interfering with Plaintiffs' use of the Domain Name;
4. Award to Plaintiffs their costs and attorney's fees; and
5. That the Court grant such other, further, and different relief as the Court deems proper under the circumstances.

DATED this 17th day of April, 2006.

Respectfully Submitted,

BRUCE G. CASSIDY & ASSOCIATES, P.A.

By:



Bruce G. Cassidy
353 Nassau Street
Princeton, New Jersey 08540
Phone: (609) 252-9800
Facsimile: (609) 252-9111
E-mail: BGCLaw@aol.com



Overstock.com, Inc.
6322 South 3000 East, Suite 100
Salt Lake City, UT 84121
Phone: (801) 947-3259
Fax: (801) 947-3144
Email: SHutchinson@Overstock.com

July 12, 2005

VIA E-MAIL (ari@esqwire.com)

RE: Trademark: OVERSTOCK.COM®
Registered to: Overstock.com, Inc.
Domain Name: Overstocks.com

Dear Sir or Madam:

It has recently come to the attention of Overstock.com, Inc. ("Overstock.com") that you have registered the domain name Overstocks.com. Overstock.com is the owner of the federal trademark registration 2,503,246, for the mark OVERSTOCK.COM®. Overstock.com has used this mark nationwide in the United States and in many countries outside the United States since at least as early as 1999. After investigation, we note that you have no registration of a mark similar to OVERSTOCK.COM®.

Your registration of the domain name Overstocks.com results in public confusion, serious dilution to the mark, tarnishment of the mark, false advertising in that the existence of the domain name tends to mislead consumers and irreparable harm to the good will of Overstock.com.

Your registration is held by Tucows, Inc. ("Tucows"). By copy of this letter, Overstock.com is notifying Tucows of its position with respect to your use of Overstocks. This letter constitutes formal notice of Overstock.com's request to cease and desist from using the *Overstocks.com* domain name. If Overstock.com cannot resolve this conflict, it intends to use all remedies against you to protect its rights. To that end, Overstock.com will accept proof of transfer or forfeiture of the domain name Overstocks.com as evidence of compliance with this letter. Such proof must be submitted to me by July 29, 2005 or Overstock.com will begin pursuit of all legal and equitable remedies available to it.

Overstock.com has consistently taken effective action against users of same or similar names. Accordingly, you must undertake immediate steps to affect such transfer or forfeiture. When the transfer is complete, we will provide you with a full release. We look forward to your prompt reply.

Sincerely,

Steven R. Hutchinson
General Counsel

cc: TUCOWS.com, Inc.
96 Mowat Avenue
Toronto, Ontario
M6K 3M1
Canada
compliance@opensrs.org

EXHIBIT A

LAW OFFICES

BRUCE G. CASSIDY & ASSOCIATES, P. A.

SUITE 1040

STEPHEN GIRARD BUILDING

21 SOUTH 12TH STREET

PHILADELPHIA, PENNSYLVANIA 19107

BRUCE G. CASSIDY
ALSO MEMBER N.J. & MASS. BARS

OF COUNSEL

DR. PETER H. FEUERSTEIN

ADMITTED TO PRACTICE

FED. REP. OF GERMANY

HALINA PILARSKA

ADMITTED TO PRACTICE

REPUBLIC OF POLAND

(215) 568-6700

FAX (215) 568-4077

August 3, 2005

Sent Via Fax 801-947-3144 & Regular Mail

Steven R. Hutchinson, Esquire

Overstock.com, Inc.

6322 South 3000, Suite 100

Salt Lake City, UT 84121

Re: Your Client: Overstock.com
Our Client: Web Services

Dear Mr. Hutchinson:

Your letter of 7/12/05 has been forwarded to my attention.

Kindly be advised that Web Services registered the Domain Name, Overstocks.com several years prior to your client's registration of its similar name. My client has used its domain name in the course of its business.

At no time did your client ever make inquiry of my client about its pre-existing domain name. I have no knowledge whether or not your client notified the US Trademark office of my client's existent registered domain name at or about the time your client registered its Trademark.

Any confusion caused by these similar domain names was/is caused solely by your client's actions or inaction. Your clients activity has caused and my continue to cause damage to my client's interests and I will utilize all remedies against your client to prevent same.

If you wish to discuss this matter further, please do not hesitate to contact me.

Very truly yours,

BRUCE G. CASSIDY & ASSOCIATES, P.A.



Bruce G. Cassidy, Esquire

cc: Web Services, Inc.
TUCOWS.com, Inc.

EXHIBIT B



Overstock.com, Inc.
6350 South 3000 East
Salt Lake City, UT 84121
Phone: (801) 947-3259
Fax: (801) 453-1094
Email: SHutchinson@Overstock.com

April 4, 2006

VIA EMAIL (ari@esqwire.com)

RE: Trademark: OVERSTOCK.COM®
Registered to: Overstock.com, Inc.
Infringing Domain: www.overstocks.com

Dear Sir or Madam:

This letter reiterates the formal notice of Overstock.com's demand dated July 12, 2005, attached hereto, for you to cease and desist from using the www.overstocks.com domain name. Overstock.com is the owner of the federal trademark registration 2,503,246, for the trademark OVERSTOCK.COM®. Overstock.com has used this famous mark nationwide in the United States and in many countries outside the United States since at least as early as 1999. Overstock.com has spent millions of dollars worldwide in promoting its trademarks, products, and services. As a result of our promotional efforts as well as vigilance in protecting against third-party use of the OVERSTOCK.COM® mark, this trademark is entitled to the broadest scope of protection under law. After investigation, we note that you have no registration of a mark similar to OVERSTOCK.COM®, and with regard to the first use of your domain, no evidence of use exists prior to December 25, 2003, at which time www.overstocks.com merely contained the text "Overstocks.com Coming Soon..."

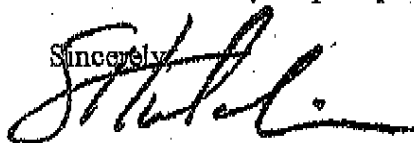
Your registration of the domain name causes significant monetary damage to Overstock.com and results in public confusion, serious dilution to the mark, tarnishment of the mark, false advertising in that the existence of the domain name tends to mislead consumers and irreparably harm the good will of Overstock.com.

We note that registration to the domain is held by Web Services, Inc. ("Web Services"). By copy of this letter, Overstock.com is notifying Web Services of your infringing use of www.overstocks.com. If Overstock.com cannot resolve this conflict promptly, it intends to use all remedies against you to protect its rights. To that end, Overstock.com will accept proof of transfer or forfeiture of the domain name as evidence of compliance with this letter. Such proof must be submitted to me by April 17, 2006, or Overstock.com will begin pursuit of all legal and equitable remedies available to it.

EXHIBIT C 1 of 2

Overstock.com has consistently taken effective action against users of same or similar names. Accordingly, you must undertake immediate steps to affect such transfer or forfeiture. When the transfer is complete, we will provide you with a full release. We look forward to your prompt reply.

Sincerely,



Steven R. Hutchinson
General Counsel

cc:

Harrison Uhl
501 Forrestal Road
Suite 218
Princeton, NJ 08540
Fax: 609.987.8118
huhl@email-services.net

EXHIBIT C 2012